IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6129 of 2007()

CRIME NO.18/02 OF THE RANNY EXCISE RANGE.

PETITIONER : ACCUSED

SHAJI, S/O.GEORGE,
CHAMAKALAYIL HOUSE, ANGADI VILLAGE,
VALIKKAVU P.O., THULIMON MURI,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ABRAHAM SAMSON

RESPONDENTS: STATE

THE STATE OF KERALA,
REPRESENTED BY THE EXCISE INSPECTOR,
RANNY EXCISE RANGE- THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6129 OF 2007

Dated this the 9th day of October, 2007

ORDER

Application for anticipatory bail. The learned counsel for the petitioner now clarifies that the relevant crime number is Crime No.18/02 of Ranny Excise Range. The petitioner faces allegations under Sec.55(g) of the Kerala Abkari Act. He was allegedly found to be in possession of 22 litres of Wash. Investigation is complete. Final report has already been filed. Cognizance has been taken. Committal court has registered the proceedings as C.P.No.16/07. The petitioner has not appeared before the committal court. The petitioner was never arrested either before or after the filing of the charge sheet. Coercive processes have been issued against the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to co-operate with the court for the expeditious disposal of the case. He is willing to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, prayed that directions under Sec.438 and/or 482 of the Cr.P.C. may be issued in favour of the petitioner.

3. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before

the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge